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84-1036

In the

Supreme Court of the United States

October Term, 1984

ANTHONY MATERIA,

Petitioner,

-v-

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MARTIN H. KAPLAN*
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**Counsel of Record*

(355)

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Resettled Amended Final Judgment of Permanent Injunction and Order for Disgorgement as to Defendant Anthony Materia, In the United States District Court for the Southern District of New York 17a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	83 Civil 625 (CLB)
Plaintiff,	RESETTLED AMENDED FINAL JUDGMENT OF PERMANENT INJUNCTION AND ORDER FOR DISGORGEMENT AS TO DEFENDANT ANTHONY MATERIA
-against-	
ANTHONY MATERIA, CONCETTA MATERIA,	
Defendants.	

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Plaintiff Securities and Exchange Commission ("Commission"), having filed its First Amended Complaint ("Complaint") herein on October 19, 1982, seeking inter alia, to enjoin the defendant Anthony Materia ("A. Materia"), from further violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b) and 78n(e) and Rules 10b-5 and 14e-3,

17 C.F.R. §§240.10b-5 and 240.14e-3, thereunder, the defendant A. Materia having filed an Answer on November 15, 1982, the Court having held a trial on this matter commencing on November 14, 1983 and concluding on December 5, 1983, at which the defendant A. Materia appeared, and this Court on December 5, 1983 having issued an opinion and order which constitute this Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procecure; and

FURTHER, this Court having found that defendant A. Materia violated Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder, in connection with his transactions in the securities of Brookwood Health Service, Inc. ("BWHS"), Cenco, Inc. ("Cenco"), Criton Corp. ("Criton"), and Evans-Aristocrat Industries, Inc. ("EAI"); and

FURTHER, this Court having found that there is a reasonable likelihood that defendant A. Materia will violate the above specified provisions of the federal securities laws and that it is appropriate that defendant A. Materia disgorge profits he obtained from transactions in the securities of BWHS, Cenco, Criton and EAI and this Court having found that there is no just reason for delay, and on reading and filing the letter of defense counsel dated December 16, 1983 which this Court hereby finds to constitute an appropriate computation, it is hereby

I

ORDERED, ADJUDGED AND DECREED that defendant A. Materia, his agents, employees, servants, attorneys, and those persons in active concert or participation with him, and each of them, be and hereby are permanent-

ly enjoined from, directly or indirectly, in connection with the purchase or sale of the securities of any issuer, by the use of any means or instrumentality of interstate commerce, of the mails, or of any facility of any national securities exchange;

(1) employing any device, scheme, or artifice to defraud;

(2) making any untrue statement of material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder, by, among other things:

(1) misappropriating confidential, material information concerning mergers, acquisitions or tender offers or companies involved in merger, acquisition or tender offer discussions and negotiations, which information has been entrusted to him, his employer or any person or entity set forth above; and,

(2) conveying such information to other persons who he knows, or has reason to know, will purchase or sell securities of companies involved in such mergers, acquisitions, or tender offers or negotiations or discussions of same; and, or

(3) purchasing or selling securities of such companies or causing such securities to be purchased or sold, unless within a reasonable time prior to any such purchase or sale, such information and its source are publicly disclosed, by press release or otherwise.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant A. Materia, his agents, employees, servants, attorneys and those persons in active concert or participation with him, and each of them, be and hereby are permanently enjoined from, directly or indirectly,

(1) making any untrue statement of a material fact or omitting to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(2) engaging in any fraudulent, deceptive or manipulative acts or practices;

in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request or invitation in violation of Section 14(e) of the Exchange Act, 15 U.S.C. §78n(e).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant A. Materia, his agents, employees, servants, attorneys and those persons in active concert or participation with him, and each of them, be and hereby are permanently enjoined from, directly or indirectly, purchasing or selling or causing the purchase or sale of any security or any securities convertible into or exchangable for any such securities or any option or right to obtain or to dispose of any of the foregoing

securities, if any person has taken a substantial step or steps to commence, or has commenced a tender offer for such securities ("the offering person"), while in possession of material information relating to such tender offer which information he knows or has reason to know is non-public and which he knows or has reason to know has been acquired directly or indirectly from (1) the offering person, (2) the issuer of the securities sought or to be sought by such tender offer or (3) any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any purchase or sale such information and its source are publicly disclosed by press release or otherwise, in violation of Rule 14e-3, 17 C.F.R. § 240.14e-3, adopted pursuant to Sections 14(e)

and 23(a) of the Exchange Act, 15 U.S.C. §§78n(e), 78w(a).

II

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant A. Materia disgorge profits received by him in connection with his transactions in the securities of BWHS, Cenco, Criton and EAI in the amount of $99,862.50 sought by the Commission in its First Amended Complaint and deemed appropriate by this Court in its Opinion of December 5, 1983 as herein modified, said funds to be paid in the following manner:

(1) the sum of $99,862.50 to be paid by defendant A. Materia shall be paid into the registry of this Court by certified check(s) drawn to the Order of

"Clerk, United States District Court, S.D.N.Y."; whereupon the Clerk of this Court, or the financial deputy clerk, is hereby directed to deposit the said check(s) in an interest-bearing account, as a time deposit, in the name and to the credit of this Court, in the following designated depository for money of this Court (the "Depository"): Citibank N.A., formerly First National City Bank;

(2) the account shall be held by the Depository as a time deposit for an initial period of 90 days; thereafter, it should be held for successive periods of 90 days, subject to the further order of this Court;

(3) interest earned on the account shall be credited to the account and shall thereafter be treated in the same manner as the principal payment;

(4) that the distribution of the amount paid by the defendant A. Materia pursuant to this Order, shall be effected according to such plan or terms ("plan") as will be submitted by plaintiff Commission, within ninety days following the entry of this judgment herein, unless a notice of appeal is filed by defendant A. Materia within sixty days of the entry of such judgment, in which case the Commission shall submit its plan within ninety

days following the conclusion of such appeal, subject to the approval of this Court, with costs of administration and distribution, if any, to be paid from the principal paid by defendant A. Materia or interest accrued on such sums. In no event shall any sums disgorged or interest accrued thereon be returned to the defendant A. Materia.

III

IT IS FURTHER ORDERED, ADJUDGED AND DEGREED that the Temporary Restraining Order of October 19, 1982 entered by this Court as to defendant A. Materia and to co-defendant Concetta Materia is hereby dissolved except as

to the $99,862.50 of profits received by defendant A. Materia in connection with his transactions in the securities of BWHS, Cenco, Criton and EAI; said funds to be paid into the registry of this Court in the manner set forth in paragraph II(1), supra, such dissolution to be effective only upon proof of receipt by the Clerk of Court out of such restrained funds of the said amount of $99,862.50 which said sum the parties restrained are hereby authorized and directed to pay over to the said Clerk of Court.

IV

IT IS FURTHER ORDERED that this Order of Disgorgement shall be enforceable by all legal and equitable remedies available to plaintiff Commission, or to any officer, agency or instrumentality of the United States.

V

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes consistent with the foregoing.

/s/ Charles L. Brieant
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 23, 1984

JUDGMENT ENTERED: 1/23/84

/s/ Raymond F. Burghardt
CLERK

Filed January 23, 1984
U.S. District Court
S.D. of N.Y.

MJA#15/al